

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.22438 of 2006

ORDER:

The order passed by the District Educational Officer, Krishna, Machilipatnam/third respondent herein vide Proceedings L.Dis.No.56/(A2)/2000, dated 04.09.2003, is under challenge in the present writ petition.

2. The District Educational Officer, Krishna, Machilipatnam/third respondent herein, consequent upon the recommendations of the Deputy Inspector of Schools, K.V.Range, Machilipatnam approved the selection of the petitioner herein as Hindi Pandit Grade II along with three others. The said selection was undertaken by the Staff Selection Committee. As a consequence of the above said approval orders passed by the third respondent/District Educational Officer, the fourth respondent issued proceedings Rc.No.69-7/A-Ele/RCM/95, dated 07.02.1995. Subsequently, absorbing the petitioner against the aided post of Grade II Hindu Pandit with effect from 04.09.2000, the fourth respondent herein issued an order. Vide proceedings under challenge dated 04.09.2003, the third respondent herein granted approval for absorption of the petitioner herein while directing the petitioner to continue as apprentice for a period of two years and for regularisation thereafter. The validity of the said order is under challenge in the present writ petition.

3. According to the learned counsel for the petitioner the action of the third respondent in not granting absorption against grant-in-aid post with effect from 04.09.2000 as per the orders of the fourth respondent dated 07.02.1995 is highly illegal, arbitrary and violative of Article 14 of the Constitution of India. It is further submitted that there is absolutely no basis for the third respondent to pass such an order. It is also the submission of the learned counsel that the petitioner herein was appointed by the Staff Selection Committee and the same was approved by the third respondent. It is further contended that the clear vacancy of Hindi Pandit Grade II post arose in the fourth respondent School on 31.08.2000 and the petitioner was absorbed in the said post with effect from 04.09.2000. It is further submitted that as the fourth

respondent submitted proposals as long as back as on 18.09.2000 there is no justification on the part of the third respondent to extend the benefits prospectively.

Learned counsel for the petitioner in support of his submissions place reliance on the orders of this Court in W.A.No.1850 of 2004, dated 21.02.2005 and W.P.No.5822 of 2006, dated 27.02.1997.

4. On the contrary, it is submitted by the learned Government Pleader that there is no illegality nor there is any infirmity in the impugned action and is strictly in accordance with law.

5. There is absolutely no dispute with regard to the fact that the fourth respondent school sought approval with effect from 04.09.2000. The counter also reflects the said factum of submission of proposals by the fourth respondent vide proceedings dated 18.08.2000. There is absolutely no reason assigned in the counter affidavit as to why the matter was kept pending for a period of three years i.e., till 04.09.2003. In fact, when a similar issue cropped up, this Court in W.P.No.5822 of 1996, while allowing the writ petition held as under:

“... . It is to be noticed that the petitioner prior to appointing in the aided post is already working in the unaided post. It is only when a regular vacancy arose on 1-8-1993, the petitioner was sought to be inducted into the regular aided post. It is not the case that the aided post arose only on 13.04.1995. When the post was already there as on 1.8.1993 and the petitioner admittedly, was discharging the duties of Lecturer in the said post, I do not find any reason to deny the aided post to the petitioner from the date when the existing incumbent retired on 1-8-1993. It is also manifest from the proceedings of the second respondent dated 28.12.1996 that as many as four persons were appointed to the aided vacancies when the vacancies arise.”

6. In the instant case also admittedly the grant-in-aid post arose with effect from 31.08.2000 and the fourth respondent School also sent a proposal on 18.08.2000 and the third respondent kept the matter pending for three years for passing the impugned order. This Court does not find any justification on the part of the third respondent in denying the benefit of absorption of the petitioner against the grant-in-aid post with

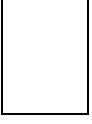
effect from 04.09.2000 as requested by the fourth respondent having regard to the law laid down in the above referred order of this Court.

7. For the aforesaid reasons, writ petition is allowed, declaring the non-absorption of the services of the petitioner herein against the aided vacancy with effect from 04.09.2000 as illegal, arbitrary and the respondents are directed to absorb the petitioner against the grant-in-aid vacancy of Hindi Pandit Grade II with effect from 04.09.2000 with all consequential benefits. The entire exercise shall be completed within a period of six months from the date of receipt of this order. No costs. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

Date: 15.11.2017
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A.V.SESHA SAI, J



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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Dated:15.11.2017

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